IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.371 OF 2000
IN
WRIT PETITION NO.3792 OF 2000

Smt.Nirmala Revappa Pattanshetti
aged about 47 years, occupation
Head Mistress, Sant Damaji
High School, Mangalwedha, residing
at and post Mangalwedha,
District Sholapur .. Appellant.

Versus

1. Shri Mahadev Ramchandra Mali
age about 49 years, occupation
Teacher, residing at and post
Mangalwedha, Taluka Mangalwedha
District Sholapur. ..
2. Shri Vidya Vikas Mandal
Mangalwedha through its
Secretary, having its office
at Shri Sant Damji Mahavidyalaya
Mangalwedha, Dist. Sholapur ..
3. Education Officer (Secondary
School) Zilla Parishad,
Sholapur .. Respondents.

Shri S.G.Deshmukh for the appellant.
Mrs.Anita Agarwal for respondent no.1.

CORAM : SMT.RANJANA DESAI
& D.B.BHOSALE, JJ.

DATED : 15TH FEBRUARY 2006.

JUDGMENT: (PER D.B.BHOSALE, J.)

1. This letters patent appeal is directed against the order dated 23.8.2000 passed by the learned Single Judge of this Court in Writ Petition No.3792 of 2000 by which the writ petition was

rejected at the stage of admission. In the writ petition, the appellant had impugned the judgment and order dated 23.6.2000 of the Presiding Officer, Additional School Tribunal, Pune Region, Solapur in Appeal No.71 of 1998. Respondent no.1 had filed the said appeal challenging his reduction in rank from the post of Head to the post of Assistant Teacher.

2. The school tribunal by its judgment and order dated 23.6.2000 declared an appointment of the appellant as Head Mistress of Shri Santa Damaji Mahavidyalaya, Mangalwedha, the school run by respondent no.2 (for short "the school"), to be illegal and against the provisions of the Maharashtra Employees of Private Schools (Conditions of service) Regulation Act, 1977 (for short "the Act") and the rules made in that behalf and further directed to restore respondent no.1 to his original post of Head of the school and granting all benefits attached to the said post.

3. Respondent No.2 - Shri Vidya Vikas Mandal, Mangalwedha (for short "the institution or management") started the school in the year 1985-86. It was initially started on a non-grant basis. Subsequently, from the year 1988, the

school started receiving partial grant-in-aid and from 1991-92 it became a 100% grantable school. Admittedly, right from the inception, the appellant was appointed as an Assistant Teacher in the school i.e. from 22.10.1985. She had already passed her B.A., B.Ed and was thus fully qualified to be appointed as a trained Assistant Teacher.

4. The case set up by the appellant is that respondent no.1 was appointed in the school in the untrained teachers scale, straight a way to the post of Head Master, with effect from 1.8.1987. The said appointment was as Incharge Head Master for the period from 1.8.1987 to 30.6.1988. His appointment was thereafter continued from time to time until the appellant was appointed to the post of Head of the school on 23.4.1998. Though respondent no.1 was working as the Head for about ten years, admittedly his appointment was not approved by respondent no.3 - Education Officer. Respondent no.1 was not qualified to be appointed to the post of Head in 1987-88 and, therefore, all throughout he was treated as Incharge Head Master of the school. It appears that statements in the form of letters were recorded in the presence of the Education Officer on 25.6.1997 by which, it is alleged by respondent no.1, that the seven teachers

including the appellant, who were senior to respondent no.1, had relinquished their right of appointment on the post of Head and in view thereof it was claimed by respondent no.1 that his appointment as the Head was legal and was made in adherence to the provisions of Rule 3(3) of the Maharashtra Employees of Private Schools (Conditions of service) Rules, 1981 (for short "the rules").

5. It appears that since respondent no.1 was not possessing a required qualification to be appointed as Head, respondent no.3 did not approve of his appointment and, therefore, he was continued as Inharge Head. Since the management was not making an appointment of a regular Head Master, respondent No.3 stopped grant-in-aid to the school which ultimately forced the institution to appoint the appellant as the Head.

6. Respondent no.1 handed over the charge to the appellant, on her being appointed as Head of the school, without raising any objection and without any demure on 23.4.1998. Her appointment was initially approved as Incharge Head Mistress and thereafter as Head of the school and as such she was granted scale of Head of the school with

effect from 24.4.1998. It is this action of the institution, which according to respondent no.1 was amounting to reduction of his rank, was challenged in appeal under section 9 of the Act before the school tribunal.

7. Respondent No.1 has filed reply affidavit denying a claim of the appellant to be appointed as the Head Mistress of the school mainly relying upon her letter dated 25.6.1997 by which the appellant allegedly relinquished her claim/right over the post of Head of the school. He has stated that he was holding that post for more than 10 years and that the appellant never objected to his appointment as the Head. He claims that on the date of an appointment he was holding required qualification to be appointed as the Head of the school. It is against this backdrop he has placed reliance upon the provisions of rule 3(3) of the rules and contended that the appellant after having made the statement before respondent no.3, relinquishing her right of appointment on the post of Head, cannot turnaround and claim the said post.

8. We heard the learned counsel appearing for the parties for quite sometime and with their assistance perused the impugned orders and other

material placed before us. At the outset Mr.Deshmukh, learned counsel for the appellant submitted that the appointment of respondent no.1 was ipso facto bad in law since in 1987, when he was appointed as Head, he was not possessing the required qualification for the said post. He further submitted that the procedure provided for in rule 3 for an appointment of Head of a school was also not followed and, therefore, the so called appointment of respondent no.1 as Head in 1987 was bad in law. The procedure laid down in rule 3 of the rules is mandatory in character and that cannot be bypassed for any reason whatsoever. He further submitted that even if it is assumed that the appellant made a statement, in the form of a letter dated 25.6.1997, relinquishing her claim to the post of Head of the school before the Education Officer, such statement cannot be treated as one which is provided for in the explanation appended to sub-rule (3) of rule 3 of the rules. The said letter was obtained after the appointment of respondent no.1 and not before. Moreover a bare reading of the statement/letter would show that the appellant had not relinquished her claim to the post of Head of the school. He then submitted that an appointment of the appellant as Head cannot be termed as a reduction in rank of respondent no.1

since he was not holding that post as regular Head Master and all throughout he was Incharge Head Master of the school. Mr.Deshmukh lastly submitted that the appointment of respondent no.1 was neither approved by the Education Officer nor was he paid regular salary of Head Master and, therefore, he cannot claim that he was reduced in rank.

9. On the other hand Ms.Agarwal, learned counsel for respondent no.1 submitted that it is not open for the appellant to claim the post of Head as she had relinquished her right by making statement on 25.6.1997 before the Education Officer. Sub-rule (3) of rule 3 clearly inhibits the senior teacher, who has relinquished his/her right/claim in writing, to turnaround and claim the said post. She further submitted that respondent No.1 was holding the said post since 1987 and that the appellant never made any grievance whatsoever regarding her appointment as Head. Ms.Agarwal then submitted that besides the written statement, the appellant by her conduct, accepted the appointment of respondent no.1 by keeping quite for 10 years and signing the seniority list showing him senior to her. Our attention was drawn to rule 12 of the rules to contend that the appellant did not raise any objection to the seniority list showing

respondent no.1 as her senior and therefore now it is not open for her to claim the post of Head. In support of this contention a reliance was placed upon the judgment of this Court in **Burondi Karajgaon Lodgar Panchkroshi Shikshan Sanstha & Others Vs. Vilasrao Maruti Desai and Others 1992 (2) Mh.L.J. 779**. From bare reading of the statement/letter dated 25.6.1997 according to Ms.Agarwal, it is clear that even the procedure prescribed under rule 3 was followed by the Management. The Management did communicate to the appellant an occurrence of the vacancy, which is reflected in the first paragraph of the letter dated 25.6.1997. In the letter she has also appreciated the services rendered by respondent no.1 for ten years and gave up her claim on the said post. She further submitted that respondent no.1 was getting the revised pay scale as regular Head Master with effect from 3.8.1999 and it is clearly reflected in the order of the revised pay scale dated 6.11.1993 issued by the President of the Institution. Our attention was drawn to the communication received by respondent no.1 from Marathwada university to contend that respondent no.1 was holding required qualification and it is rightly held by the tribunal and affirmed by the learned Single Judge that respondent no.1 was

qualified to be appointed as the Head of the school. Lastly, she submitted that it is not open for this Court in the letters patent appeal to reassess the evidence produced by the parties and reach a conclusion other than the one which is arrived at by the authority below. In support of this contention the reliance was placed on the judgment of the Apex Court in **Umabai and Anr. Vs. Nilkanth Dhondiba Chavan (Dead) by LRs. and Anr.(2005) 6 SCC 243**.

10. At the outset, we would like to consider the last submission of Ms.Agarwal first. It is true that the power of the appeal court in letters patent appeal is not identical with that contained in section 100 of the Code of Civil Procedure. It is equally settled that an entertainment of a letters patent appeal is discretionary and **normally in the absence of cogent reasons** the Division Bench is not expected to differ from a finding of fact recorded by Single Judge as noted by the Apex Court in Umabai's case (supra). The relevant observations made by the Supreme Court in paragraph 52 read thus:

> "52. It may be, as has been held in Asha Devi that the power of the appellate court in intra-court appeal is not exactly the same as contained in section 100 of the

> Code of Civil Procedure but it is also well known that entertainment of a letters patent appeal is discretionary and **normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the learned Single Judge**. Even as noticed hereinbefore, a court of first appeal which is the final court of appeal on fact may have to exercise some amount of restraint."
>
> (emphasis supplied)

. It is thus clear that if there exist cogent reasons the Division Bench in letters patent appeal can differ from finding of fact arrived at by the learned Single Judge. In our opinion, the instant case is one where finding of fact arrived at requires to be interfered with since there exist cogent reasons for the same, which we now proceed to record in the latter part of the judgment.

11. Before we deal with the arguments advanced by the learned counsel for the parties and examine the merits of the case, for better understanding, it would be advantageous to look into the provisions of rule 3 of the rules and the definition of Head, on which a considerable length of arguments were advanced by the learned counsel for the parties. The word ‘Head’ is defined in sub section (9) of section 2 which reads thus:

> "(9). "Head of a school" or "Head" means the person, by whatever name called, in

> charge of the academic and administrative duties and functions of a school conducted by any Management and recognised or deemed to be recognised under this Act, and includes a principal, vice-principal, head master, head mistress, assistant head master, assistant head mistress, or superintendent thereof."
>
> (emphasis supplied)

. A bare reading of the definition would show that Head means a person Incharge of the academic and administrative duties, and functions of a school conducted by any management and recognised or deemed to be recognised under the Act. The recognition under the Act is thus necessary to call a person Head of a school. Rule 3 provides for qualifications and appointment of ‘Head’. Clause (b) of sub-rule (1), sub-rule (2) and (3) with the explanation, sub-rule 5(a) and sub-rule (6) of rule 3, with which we are primarily concerned in the instant appeal, read thus:

> "3. Qualifications and appointment of Head - (1) A person to be appointed as the Head -
>
> (a) (i) ....
>
> (ii) ....
>
> "(b). of a secondary school including night school or a Junior College of Education shall be a graduate possessing Bachelor’s degree in teaching or education of a statutory University or any other qualification recognised by Government as equivalent thereto and possessing not less than five years’ total full-time teaching

experience after graduation in a secondary school or a Junior College of Education out of which at least two years' experience shall be after acquiring Bachelor's degree in teaching or education."

(i) ....

(ii) ....

"(2) In the case of appointment to the post of Head of a secondary school including night school or a Junior College of Education if there is no person with the teaching experience mentioned in clause (b) of sub-rule (1) available on the staff of the school or if the qualified persons, though available and eligible, relinquish their claims for the post of head and if a Management desires to appoint a person, from the teaching staff of the school who does not possess the requisite teaching experience mentioned in clause (b) of sub-rule (1), it shall apply to the Deputy Director for relaxing the requirement. The Deputy Director may, after recording reasons in writing, grant or refuse such relaxation. In such cases, the appointment shall not be made without obtaining the previous approval of the Deputy Director."

....

(3) The Management of a school including a night school shall fill up the post of the Head by appointing the seniormost member of the teaching staff (in accordance with the guidelines laid down in Schedule "F" from amongst those employed in a school (if it is only school run by the Management) or schools (if there are more than one school (excluding night school) conducted by it) who fulfils the conditions laid down in sub-rule (1) and who has a satisfactory record of service.

Explanation - For the purpose of this rule, the Management shall communicate any occurrence of vacancy of the Head to the senior-most qualified teacher having satisfactory record of service and ask him to submit his willingness for appointment to the post within a period of fifteen days

from the date of receipt of the communication. The claim of the senior-most qualified teacher having satisfactory record of service, for appointment to the post of Head, may be disregarded only if he, of his own free will, gives a statement in writing to the Education Officer that he has voluntarily relinquished his claim to the post. This shall not debar him from being considered for subsequent vacancies as and when they occur. Such a teacher shall record his statement in his own handwriting before the Education Officer within a period of fifteen days from the date of receipt of the communication as aforesaid and the Education Officer shall endorse it as having been recorded in his presence. A statement once duly made by such teacher before the Education Officer shall not be allowed to be withdrawn. In the event of the teacher failing to submit his willingness for appointment to the post or to give a statement to the Education Officer within a period of fifteen days, it shall be assumed that he has relinquished his claim on the said post:

....

(4) ....

(5)(a) If a suitable teacher possessing qualifications laid down in the foregoing provisions of this rule is not available to fill in the post of a Head of a school, the Management shall, with the prior permission of the Education in case of primary schools, or of the Deputy Director in the case of other schools, advertise the post and select and appoint a person possessing the requisite qualifications and experience."

(b) ....

(6) The Education Officer or the Deputy Director shall direct the management to cancel the appointment made without following the procedure laid down in this rule".

Explanation: For the purpose of this rule

> the record of service shall be deemed to be satisfactory if there is nothing adverse in the annual confidential reports of the teacher concerned during the previous five years. Adverse remarks not duly communicated in writing to the teacher concerned, shall be disregarded for this purpose."

12. From the bare perusal of the aforesaid provisions it is clear that the Management must follow and/or comply with the following procedure and/or the requirements while appointing a person to be the Head of a school: (i) He/she should be a graduate possessing Bachelor’s degree in teaching or education of a statutory University; (ii) He should possess such a degree for not less than five years’ total full-time teaching experience after graduation out of which at least two years’ experience should be after acquiring Bachelor’s degree in teaching or education; (iii) If there is no person with the teaching experience mentioned above in clause (b) of sub-rule (1) available on the staff of the school or if the qualified persons, though available and eligible, relinquish their claims for the post of Head and if a Management desires to appoint a person, from the teaching staff of the school who does not possess the requisite teaching experience mentioned in the said clause, it should apply to the Deputy Director

for relaxing the requirement; (iv) The Deputy Director has the power to relax such requirement only after recording reasons in writing; (v) No appointment of a person who does not fulfil the aforestated requirement shall be appointed without obtaining the previous approval of the Deputy Director; (vi) The Management is empowered to fill up the post of Head by appointing the seniormost member of the teaching staff in accordance with the guidelines laid down in Schedule "F" from amongst those employed in a school; (vii) The Management should communicate any occurrence of vacancy of the Head to the senior-most qualified teacher having satisfactory record of service and ask him to submit his willingness for appointment to the post within a period of 15 days from the date of receipt of the communication; (viii) The claim of such senior-most qualified teacher can be disregarded only if he, of his own free will, gives a statement in writing to the Education Officer that he has voluntarily relinquished his claim to the post; (ix) The statement, relinquishing claim to the post, should be recorded in handwriting of such teacher before the Education Officer within a period of 15 days from the date of communication of the occurrence of vacancy; (x) The statement once duly made by such teacher before the Education

Officer shall not be allowed to be withdrawn; (xi) In the event of the teacher failing to submit his willingness for appointment to the post or to give the statement to the Education Officer within a period of 15 days, it shall be assumed that he has relinquished his claim on the said post; (xii) If a suitable teacher possessing qualification laid down is not available to fill up the said post, the Management shall with the prior permission of the Education Officer advertise the post and select and appoint a person possessing the requisite qualifications and experience. Sub-rule (6) of Rule 3 makes it explicity clear that (xiii) If an appointment of Head of the school is made by the Management without following the procedure laid down in this rule, the Education Officer should direct the Management to cancel such appointment.

13. It may be noticed that sub-rule (6) of rule 3 empowers the Education Officer or the Deputy Director to issue directions to the Management to cancel the appointment of Head made without following the procedure in rule 3. In the light of the provisions of sub-rule (6), if rule 3 is scrutinised and construed, it clearly suggests that the procedure laid down in this rule is mandatory in character and not directory. In rule 3 all

throughout the Legislature has used word "shall". If the word "shall", employed in the provisions of statute, is capable of being construed as referring to a compellable duty, particularly when it refers to a power conferred on the authority, such as the Management in the instant appeal, it will have to be construed to mean imperative or mandatory and not directory. The word "shall" as observed by the Supreme Court in **M/s.Sainik Motors, Jodhpur and Others Vs. State of Rajasthan AIR 1961 SC 1480** "is ordinarily mandatory but it is sometime not so interpreted if the context or the intention otherwise demands. It is open for the court to ascertain the real intention of the Legislature by carefully attending to the whole scope of the statute." The language of rule 3 is precise and plain. It proclaims the legislative intent in unequivocal terms and hence the same must be given effect to regardless of the consequences that may follow. Sub-rule (6) is a clear indication of the Legislature intent which empowers the Education Officer to cancel an appointment made without following the procedure contemplated in rule 3(1) to (5). As a matter of fact sub-rule (6) is a key to unlock the meaning of other sub-rules of rule 3.

14. It would be apt at this stage to look to

the object of legislation which is amply clear from the preamble of the Act. The first paragraph of the preamble says "It is expedient to regulate the recruitment and conditions of service of employees in certain private schools in the State, **with a view to providing such employees security and stability of service to enable them to discharge their duties towards the pupils and their guardians in particular, and the institution and the society in general, effectively and efficiently."** Though the second paragraph is not relevant for our purpose we may refer to it in order to have a clear idea of the whole object of the Act. It says "It is further expedient in the public interest to lay down the duties and functions of such employees with a view to ensuring that they become accountable to the Management and contribute their mite for improving the standard of education". It is thus evident that this salutary piece of the legislation is brought about with the avowed object of providing security and stability of service to such employees for bettering the standard of the education which is so vital for the progress of the nation. This legislation undoubtedly provides the employees a statutory protection. It saves the employees from the whims and fancies of their employers and the policy of hire and fire so often

indulged in by the latter as noted by this Court in **Vanmala S.Aney Vs. National Education Society, Khamgaon and Others 1982 Mh.L.J.403**. If this being the object and purpose of the enactment they must be given due weight in construing its provisions including the rules. It is now well settled that where the power is given to do a certain thing in a certain way the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. The qualification provided for in sub-rule (1) and the procedure laid down in sub-rule (2) and (3) and the power conferred on the Education Officer under sub-rule (6) of rule 3 being mandatory in character, should be scrupulously followed and complied with without any demur. In other words, for any reason whatsoever the Management is not expected to bypass the procedure laid down and even if the Management does so the Education Officer or the Deputy Director must direct the Management to cancel the appointment made without following the procedure laid down in this rule.

15. Keeping the aforementioned conclusion in view, we would now like to deal with other submissions of the learned counsel for the parties. The main thrust of the submissions, advanced on

behalf of respondent no.1, was on the statement cum letter dated 25.6.1997 of the appellant by which she allegedly relinquished her claim to the post of Head of the school. The learned counsel devoted lot of time in interpreting the statement dated 25.6.1997 to suit their arguments. It would be advantageous to reproduce the official translation of the said statement/letter made by the appellant for better appreciation of the submissions of the learned counsel. The relevant part of the statement reads thus;

25.6.1997

"The Education Officer,
Secondary Division,
Zilla Parishad, Solapur,

Applicant : Ku.Nirmala Revappa Pattanshetti

Subject : Regarding rejection of right to promotion.

Sir.

. The Institution informed me about filing up the post of Headmaster by promotion and asked about my opinion. I am grateful to the Institution therefor.

. Teacher Shri Mahadeo Ramchandra Mali, who is presently working as Head-Master Incharge, is working properly and right from the beginning till this day, he has been making efforts for the progress of the school.

. **I hereby give in writing my right to promotion voluntarily and with full understanding**.

Yours faithfully,

(Signature illegible) (Signature illegible)

Before me Nirmala P.Pattanshetti
(Signature illegible)
Education Officer
(Secondary), Zilla
Parishad, Solapur.

(emphasis supplied)

16. Mr.Deshmukh, learned counsel for the appellant submitted that by no stretch of imagination the appellant could be said to have had relinquished her claim to the post of Head of the school. The last line of the letter, according to Mr.Deshmukh, does not indicate that the appellant gave up her right of promotion, as tried to be contended by Ms.Agarwal, learned counsel for respondent no.1. From perusal of the letter and its last line in particular, in our opinion, the appellant cannot be said to have had relinquished her claim to the post of Head of the school in unequivocal terms. Looking to the language of rule 3 employed by the Legislature, the statement contemplated in the explanation appended to sub-rule (3) of rule 3, relinquishing claim to the post of Head, should be as clear as possible and such intention should be reflected in unequivocal terms more particularly if such senior teacher is a women. In other words, the statement not only need to be made voluntarily or with full understanding but it should be plain, unambiguous and admit only one meaning. From perusal of the statement/letter

in question, we are of the opinion, that it does not fall in that category. Moreover, admittedly the statement was not made by the appellant before the so called appointment of respondent no.1. The statement/letter was obtained on 25.6.1997 whereas his appointment was made in 1987.

17. The basic requirement contemplated in the explanation appended to sub-rule (3) of rule 3 was that the Management requires to communicate any occurrence of vacancy of Head to the senior qualified teacher having satisfactory record of service and ask him to submit willingness for appointment to the post of Head within a period of 15 days from the date of receipt of the communication. Indubitably, that was not done by the Management when respondent no.1 was appointed in 1987 and/or when his pay scale was revised sometime in 1994. It is pertinent to note that after the statement of the appellant dated 25.6.1997 alongwith six other teachers, who were also senior to respondent no.1, was recorded, respondent no.2 vide letter dated 5.9.1997 informed the school that after it started receiving 100% grant why an appointment of a permanent Head had not been made. The school was further informed that if an appointment of a regular Head was not

made, the salary bills of the teachers would not be released. The explanation was also sought as to why an appointment of Head of the school had not been made. In view of this letter the school seems to have appointed the appellant as the Head, she being senior-most and qualified to be appointed to the said post. Her appointment was initially approved as Incharge Head and thereafter it was approved as regular Head. The charge was handed over by respondent no.1 without making any grievance whatsoever to the appellant. It is his case that he was assured by the Management that he would be appointed as Head soon after the pay bills of all the teachers, which were withheld by the education officer, were released and since that did not happen he approached the school tribunal. It may be noticed that respondent no.1 has not produced any material on record in support thereof.

18. We perused the entire correspondence annexed to the petition and reply affidavit and we are satisfied that respondent no.1 was Incharge Head Master all throughout. His appointment was never approved by the Education Officer as regular Head. He was all throughout referred to in the communications issued by the Education Officer as Incharge Head. Even his salary was paid as

Incharge Head in the scale of Assistant Teacher and not in the scale of Head of the school as contemplated in Part II of Schedule 'C' of the rules. Our attention was drawn to the order of revised pay scale dated 6.11.1993 by which the institution had informed respondent no.1 that he was entitled for the scale of Head Master. However, it may be noticed that the said order was made subject to approval of the Education Officer. It is clear from the statement of objects and reasons of the Act which is also reflected in preamble of the Act that the duty is caste on the Education Officer to ensure that teachers with requisite qualification are appointed and that such appointments are made in the prescribed manner. It must, therefore, be presumed that the scheme of the Code, the Act and the rules envisage and imply the action of approval or recognition by the Education Officer in respect of the appointment of the school teachers. Ms.Agarwal, could not and did not dispute that such approval was never granted and all throughout respondent no.1 was paid in the scale of Assistant Teacher being Incharge Head of the school.

19. We perused the judgment of the tribunal so as to find out where the tribunal went wrong

insofar as the statement dated 25.6.1997 made by the appellant, and application of rule 3 of the rules are concerned. In paragraph 9 of the judgment of the tribunal the following observations were made which, in our opinion, were factually wrong:

> " ... ... In this matter it is material to note that Respondent No.2 Shrimati Nirmala Pathanshetti and some other teachers were senior to appellant therefore it was necessary to appoint Respondent No.2 as Head of the school but Respondent No.2 Shrimati Nirmala Pathanshetti has given statement in writing before Education Officer stating that she has relinquished her right to be promoted as a Head of the school **because she does not want to be promoted due to her private reasons, she has already made statement before the Education Officer... ... ...**"
>
> (emphasis supplied)

. Besides, that these observations are not worded happily, it is clear that the tribunal has put the highlighted portion in the aforestated observations in the mouth of the appellant. Even, if it is accepted that the appellant relinquished her claim by making the statement, a bare perusal of the statement/letter would show that she did not do so for her personal reasons, as observed by the tribunal. The tribunal then placed heavy reliance on rule 3(3) of the rules to hold that the appellant cannot withdraw her statement and claim

the said post. As indicated earlier, this rule, in our opinion, would not inhibit the appellant from claiming the post of Head for more than one reason. Firstly, from the plain reading of the letter, it does not show that the appellant had relinquished her claim in unequivocal terms which is a basic requirement of sub-rule (3) of rule 3 of the rules. Secondly, the appellant was possessing the Bachelor's degree in Education and was admittedly qualified teacher to be appointed as Head of the school; thirdly, the appellant was senior-most teacher in the school; fourthly, she had not relinquished her claim to the post of Head in the manner in which it was required as provided for in the explanation appended to sub-rule (3) of rule 3; fifthly, the procedure mentioned in rule 3 was not followed by the Management while appointing respondent no.1 and, lastly, the Education Officer while recording the so-called statement of the appellant was not deligent enough to see whether the procedure was followed by the Management. The tribunal has committed manifest and apparent error in applying sub-rule (3) of rule 3 to hold that the appellant has no right to claim the post of Head in view of her statement of relinquishment, overlooking and/or ignoring the fact that the mandatory procedure prescribed in rule 3 was not

followed scrupulously. Even the learned Single Judge also proceeded on the assumption that appointment of respondent no.1 to the post of Head Master was regular appointment and that the appellant in writing had relinquished her claim to the said post. In view thereof, the learned Single Judge proceeded to observe that the only hinch in the appointment was that respondent no.1 was not seniormost teacher. It is thus clear that neither tribunal examined the case in proper prespective nor and the learned Single Judge.

20. That takes us to consider the next submission of both the learned counsel appearing for the parties on the qualification of respondent no.1. The Tribunal and the learned Single Judge, both have proceeded on the assumption that respondent no.1 was qualified to be appointed to the post of Head of the school. In this connection, we are of the opinion, that the material produced on record was not examined and appreciated in proper prespective. Respondent No.1 joined the school on 1.8.1987 as the Head for a temporary period i.e. until 30.6.1988 and thereafter his appointment was continued till the appellant was appointed to the post of Head. According to the appellant he acquired Bachelor’s

degree in education in June, 1987. Even if the contention of respondent no.1 that he was possessing Bachelor's degree in education in 1987, of Marathwada university is accepted, admittedly, there is nothing on record to show that he was not possessing five years' total full-time teaching experience after graduation in a secondary school out of which atleast two years' experience after he acquired Bachelor's degree in teaching or education, as contemplated in clause (b) of sub-rule (1) of rule 3 of the rules. It is thus clear that in any case he was not qualified to be appointed as Head of the school in 1987.

21. Respondent No.1, though had appeared for examination in 1987, his result was kept in abeyance for non-compliance of some mandatory condition till 1997-98 and as a result of which his result was declared by Marathwada university only in 1998. It is true that the university while declaring his result vide communication dated 22.6.1998 had informed the Education Officer to treat his result as valid from June-July 1987. However, the fact remains that on the date of appointment as Head in 1987 he was not possessing either passing certificate or the certificate of Bachelor's degree in teaching or education. The

degree certificate placed on record was issued on 21.4.1998. It is on this count also the findings recorded by the tribunal as well as the learned Single Judge are factually incorrect. In our opinion, the appointment of respondent no.1 was made surreptitiously disregarding the claim of the appellant. Had the Education Officer shown due deligence, the respondent would not have continued for years as incharge Head. In our opinion, on all counts this appeal deserves to be allowed by setting aside the orders passed by the tribunal and the learned Single Judge as well.

22. Rule 12 may also be noticed, on which heavy reliance was placed by Ms.Agarwal, learned counsel for respondent no.1. It provides for the seniority list. The rule requires the management to prepare and maintain a seniority list of the teaching staff including Head master and Assistant Head Master and non teaching staff in the school in accordance with the guidelines laid down in Schedule "F" of the rules. It further provides that the seniority list so prepared shall be circulated amongst the members of the staff concerned and their signatures for having received a copy of the list shall be obtained. Any subsequent change made in the seniority list from time to time is required to be

brought to the notice of the members of the staff concerned and their signatures for having noted the change need be obtained. Sub-rule 2 empowers the concerned teacher to raise objections to the seniority list or to the changes made in the list of seniority which the Management has taken into consideration. Disputes, if any, in the matter of inter se seniority are required to be referred to the Education Officer for his decision. Ms.Agarwal, submitted that the seniority list prepared by the institution was circulated amongst the members of the staff concerned and the appellant had signed the same for having received a copy of the list and that she never raised any objection whatsoever to the said list of seniority and, therefore, the appellant by her conduct relinquished her claim to the post of head. The two typed seniority lists are placed on record, one by the appellant and other by respondent no.1. The seniority list produced by the appellant shows the appellant as senior-most teacher. Insofar as the list produced by respondent no.1 is concerned, it is true that respondent no.1 is shown at serial no.1, holding the post of Head Master, however, this list is of the years 1986-89. During this period, respondent no.1 was Incharge Head Master, which is evident from several documents produced on

record including the communications received by the institution. We deem it appropriate to refer to a letter dated 21.8.1989 which would clearly indicate that respondent no.1, though was holding the post of Head Master, he was only Incharge Head Master. The said letter clearly shows the name of respondent no.1 in the list of Incharge Heads of different schools indicating therein that they were entitled to receive salary of Assistant Teacher only. It is this view of the matter, even if it is accepted that respondent no.1 was shown above the appellant in the seniority list and that the appellant did not raise any objection as contemplated under rule 12, it does not mean that she had relinquished her right or claim on the said post in 1987-1989 inasmuch as at that stage he was only incharge Head Master. It is also possible that since he was holding the charge of Head, his name was shown first in the list. The judgment of this Court in **Burondi Karajgaon Lodgar Panchkroshi Shikshan Sanstha & Others Vs. Vilasrao Maruti Desai and Others 1992 (2) Mh.L.J. 779** relied upon by Ms.Agarwal is of no avail to respondent no.1 in view of the peculiar facts of this case.

23. In the result we are satisfied that the mandatory provisions of rule 3 of the rules were

not followed by the Management nor did the Education Officer take any action under sub-rule (6) of rule 3. In the result, the impugned judgment and order dated 23.6.2000 of the school tribunal and the learned Single Judge dated 23.8.2000 is quashed and set aside. No orders as to costs.

(SMT.RANJANA DESAI, J.)

(D.B.BHOSALE, J.)